sec. 757; *Greenl., Ev.*, sec. 340 (15th ed.). The testimony of a polygamous wife was held cause for reversal in *Bassett v. United States*, 137 U. S. 496. To test competency, either the man or the woman may be examined on the *voir dire* as to marriage, *Seeley v. Engell*, vc *N. Y.* 542, but to establish the marriage, proof *aliunde* must be adduced. By admitting that which the witness is used to prove she is *a fortiori* incompetent.

CARRIERS OF PASSENGERS—DEFECTIVE TICKET—EJECTION—REMEDY.—WESTERN MARYLAND R. Co. *v.* SCHAUN, 55 Atl. 701 (Md.).—Because of a defect in her return ticket, due to the negligence of the conductor on the outgoing trip, plaintiff was ejected from the defendant's train. *Held*, that plaintiff could recover in an action ex contractu only, and not in one ex delecto.

There are decisions which hold that, in such circumstances, the passenger must either pay his fare or leave the train, and sue ex contractu *Hall v. M. & C. R. Co.*, 15 Fed. 57; *Townsend v. R. Co.*, 56 N. Y. 295. But the weight of authority is that he may resist ejection, and recover damages therefor. *New York etc., R. Co. v. Winters.* 143 W. S. 60; *Lake Erie, etc., R. Co. v. Fix*, 88 Md. 381; *Wood, R. R's.*, sec. 349. In Massachusetts a distinction is drawn between those cases where the passenger could have perceived the defect in the ticket upon receiving it and where he could not. *Murdock v. R. Co.*, 137 Mass. 293. The form of action usually adopted is one in tort. *Laird v. Traction Co.*, 166 Pa. St. 4; *Gorman v. R. Co.*, 97 Cal. 1. But it would seem that the same result could be reached in one ex contractu. *Johnson v. R. Co.*, 46 Fed. 347.

EMINENT DOMAIN—RAILROADS—ERECTION OF VIADUCT—STATIONS.—DOLAN ET AL. v. NEW YORK & HARLEM R. Co., 67 N. E. 612 (N. Y.).—The legislature ordered the erection of a steel viaduct through Park avenue. Upon completion the defendant was required to run its trains over it instead of through a depressed cut and over the highway. It was also required that stations which occupied more of the road than the viaduct, be erected. *Held*, that no damages could be recovered by reason of the construction of the viaduct or operation of trains thereon, but damages may be awarded as a consequence of the erection of the stations.

In most of the cases concerning the Park avenue viaduct in New York City there has been a dissenting opinion and no little difficulty has confronted the courts to ascertain precisely the rule to be followed. *Dolan v. N. Y. & H. R. Co.*, 77 N. Y. Supp. 815. The decision reached in the case under discussion and which seems to define the law is that the building of the viaduct in place of the cut is a public improvement effected through a governmental agency, and hence the defendant is not liable to abutting property owners for damages resulting from the operation of its trains thereon, but the stations are ordered to be erected to afford suitable facilities for the public, and where they interfere with the easements of light, air and access the company is liable. It seems quite impossible, however, to reconcile the first proposition with the decision in *Lewis v. N. Y. & H. R. Co.*, 162 N. Y. 202.

EX POST FACTO LAW—STATUTORY CHANGE OF PUNISHMENT BETWEEN CONVICTION AND SENTENCE.—STATE v. ROONEY, 95 N. W. 513 (N. D.).—After